

**REMARKS**

**Status of the Claims.**

Claims 10-23 and 25-41 are pending in the application. Applicants note that the Examiner has renumbered the claims. Claims 11-23, 25-31, and 33-39 have been amended to conform the claim dependencies to the claim numbers assigned by the Examiner. No new matter is added by the amendments.

**Election/Restriction.**

In the Office Action, the Examiner restricted the claims under 35 U.S.C. § 121, requiring Applicants to elect one of the following claim groups for prosecution in the present application:

- I. Claims 10-13, 20-23, 25-29, 40 and 41, drawn to an immunogenic composition as it reads on herpes virus . . . .
- II. Claims 32-38, drawn to a nucleic acid . . . .
- III. Claims 14-19, 30, 31 and 39, drawn to a method of producing a truncated membrane free polypeptide . . . .
- IV. Claims 10 and 41, drawn to an immunogenic composition comprising a truncated membrane free polypeptide derived from influenza virus . . . .
- V. Claims 10 and 41, drawn to an immunogenic composition comprising a truncated membrane free polypeptide derived from foot and mouth disease virus . . . .
- VI. Claims 10 and 41, drawn to an immunogenic composition comprising a truncated membrane free polypeptide derived from hepatitis virus . . . .
- VII. Claims 10 and 41, drawn to an immunogenic composition comprising a truncated membrane free polypeptide derived from vesicular stomatitis virus . . . .
- VIII. Claims 10 and 41, drawn to an immunogenic composition comprising a truncated membrane free polypeptide derived from rabies virus . . . .

Office Action, pages 3-4. The Office Action stated that "Claim 10 link(s) inventions I and IV-VIII." Office Action, page 5. Accordingly, the "restriction requirement among the linked inventions is subject to the nonallowance of the linking claims(s), claim 10." *Id.*

Applicants understand that, since claim 10 is a linking claim that links Claim Groups I and IV-VIII, the allowance of claim 10 will lead to the withdrawal of the restriction requirement as to Claim Groups I and IV-VIII. Office Action, page 5. Accordingly, any claims depending from claim 10 or including all of the limitations of claim 10 will be entitled to examination in the present application. Applicants submit that claim 40 is also a linking claim that links Claim Groups I and IV-VIII because claim 40 recites that the pathogen is a virus, but does not specify a particular virus and Claim Groups I and IV-VIII relate to particular viruses. Acknowledgement of this point is respectfully requested.


The Office Action further stated that the application is subject to the transitional restriction provisions of 37 C.F.R. § 1.129(b). Accordingly the Office Action indicated that Applicant could "elect the invention or inventions to be searched and examined and pay the fee set forth in 37 C.F.R. § 1.17(s) for each independent and distinct invention in excess of one." *Id.* Applicants elect Claim Groups I-III (claims 10-13, 20-23, 25-20, 40 and 40 [to the extent that these claims read on herpes virus] and claims 14-19 and 30-39) for examination in the present application. The Commissioner is hereby authorized to charge the fee set forth in §1.17(s) to Deposit Account No. 22798 for each of the two additional inventions to be examined in this application. The Commissioner is also authorized the charge any additional required fees, or to credit any overpayment, to this deposit account.

### **Conclusion**

Early examination and, in particular, consideration of the arguments filed with the Submission Under 37 C.F.R. § 1.129 and Amendment filed on August 16, 2001 is respectfully requested. If an interview with expedite the prosecution of this application, the Examiner is respectfully to telephone the undersigned at (510) 769-3509 to schedule an interview.

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Respectfully submitted,

  
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